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**ALLTEL**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

June 1, 1998

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Re: *Performance Measurements and Reporting Requirements  
for Operations Support Systems, Interconnection, and  
Operator Services and Directory Assistance  
CC Docket No. 98-56*

Dear Ms. Salas:

Enclosed for filing on behalf of ALLTEL Communications Services Corporation ("ALLTEL") please find an original and nine (9) copies of the Comments in connection with the above-referenced matter.

In response to the Commission's Notice of Proposed Rulemaking, I am submitting ALLTEL's Comments on a 3.5 inch diskette formatted in an IBM compatible form using MS-DOS 5.0 and WordPerfect 5.1 software, in "read-only mode" to Janice Myles of the Common Carrier Bureau.

Please address any questions respecting this matter to the undersigned counsel.

Very truly yours,



Carolyn C. Hill

CCH/ss

Enclosures

cc: Janice Myles  
(w/copy of pleading and diskette)

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FEDERAL COMMUNICATIONS COMMISSION  
THREE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Performance Measurements and	)	CC Docket No. 98-56
Reporting Requirements	)	RM-9101
for Operations Support Systems,	)	
Interconnection, and Operator Services	)	
and Directory Assistance	)	
	)	

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Comments of  
ALLTEL Communications Services Corporation

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Services Corporation

June 1, 1998

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## Summary

### I. The Commission Does Not Have Jurisdiction to Adopt Its Proposal.

The Commission's model rules are predicated on the faulty premise that the Commission has the requisite jurisdiction to conduct this proceeding. It does not. The 96 Act limits the Commission's jurisdiction to certain confined areas; this is not one of them. Furthermore, the Commission's proposal is contrary to the Eighth Circuit's decision in Iowa Utilities Bd., and its action is an unauthorized jump over the Section 2(b) intrastate fence.

The NPRM also conflicts with the requirements of the Administrative Procedure Act in that it is couched as a rulemaking but the Commission does not seek to adopt specific rules. It is unclear as to where the Commission ultimately intends to end up in this process, but ALLTEL believes that the ultimate outcome can only be de facto rules in an area in which the Commission has no jurisdiction.

These de facto rules will impose reporting and measurement requirements on incumbent LECs without any consideration having been given to the significant costs they will impose or how those costs can be recovered. This comes at a time when incumbent LECs are already burdened by the weight of technical requirements and costly expenditures to implement CPNI, number portability, and dialing parity.

The Commission has also skirted the issue of exactly to whom the model rules will apply. ALLTEL strongly objects to the apparent attempt to impose these

requirements on all incumbent LECs without any consideration of state jurisdiction with respect to granting rural and two percent companies exemptions and modifications from Section 251(c) obligations.

ALLTEL is at a loss to understand the Commission's decision to adopt the NPRM, especially in light of its position in the Second Order on Reconsideration in CC Dkt. 96-98 and the Chairman's recent testimony on the favorable status of competition in the local exchange market.

ALLTEL believes that the industry needs to know where the Commission intends to go. There should be some direction to the Commission's action and not just the continued institution of proceedings and issues that are not resolved by timely action on petitions for reconsideration.

#### VIII. Small and Mid-sized LECs.

From the perspective of a smaller LEC, the reporting requirements and measurements to be performed are so expansive as to be considered almost punitive. The Commission must realize that most of what it has proposed is not done by small and mid-sized LECs for their own operations and is not capable of being done for others without replacing entire systems. Once again, the ultimate question the Commission should ask is "for what purpose?" ALLTEL submits that this has not been answered or addressed. Because of this and the inherent jurisdictional hurdle, ALLTEL believes that the Commission should withdraw the NPRM.

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and Directory Assistance	)	
	)	

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**Comments of  
ALLTEL Communications Services Corporation**

ALLTEL Communications Services Corporation, on behalf of its local telephone exchange affiliates (hereinafter "ALLTEL" or the "ALLTEL companies"), respectfully submits its comments on the Commission's Notice of Proposed Rulemaking ("NPRM") released April 17, 1998, in the above captioned matter.

In Section VIII of the NPRM, the Commission invited small and mid-sized LECs to address a series of questions regarding the impact of its proposal on their operations. Because of the fact that the ALLTEL companies are small and mid-sized LECs, ALLTEL's comments herein will respond to the questions set forth in Section

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VIII. However, before addressing these specific questions, it is necessary to address some fundamental issues that are presented by the Commission's NPRM.

I. The Commission Does Not Have Jurisdiction to Adopt Its Proposal.

At page 3 of the NPRM, the Commission states:

In this proceeding, we propose a methodology by which to analyze whether new providers of local telephone service are able to access, among other things, the support functions (that is, the functions provided by computer systems, databases, and personnel) of incumbent local telephone companies in a nondiscriminatory and just and reasonable manner consistent with the 1996 Act's requirements.

According to the Commission, the primary goal of this NPRM is to provide guidance to the states and the industry on a set of performance measurements and reporting requirements that will help spur the development of local competition. Moreover, it says the proposed model performance measurements and reporting requirements will not be legally binding, but their application by the states will provide a more informed and comprehensive record upon which to decide whether to adopt "national, legally binding rules." NPRM at 4.

ALLTEL believes that the Commission is proceeding on the faulty premise that it has the requisite jurisdiction to conduct this proceeding and to adopt "model rules" or "guidelines". First, the Telecommunications Act of 1996 ("96 Act") carefully constructs the ground rules for competition in the local exchange market, the foundation upon which that competition is to be built, and it clearly delineates the authority given to the states and that given to the FCC. The underpinning of Sections

251 and 252 of the 96 Act is that competition is to result from the culmination of successful voluntary interconnection negotiations between incumbent LECs and telecommunications carriers. To the extent parties cannot agree, the 96 Act gives the states authority to act as mediators or arbiters as well as authority to approve or reject any interconnection agreement.

The Commission's authority under Sections 251 and 252 has been addressed at length by the Eighth Circuit in Iowa Utilities Bd. v. FCC, 120 F 3d 753 (8th Cir. 1997)\*. The court has held that the Congress granted the Commission limited jurisdiction and confined its authority to certain identified areas, such as the identification of unbundled network elements, and the implementation of regulations addressing those identified areas within a specified time frame. However, absent some clear directive in those sections, the Eighth Circuit found the 96 Act does not permit the Commission to jump over the Section 2(b) intrastate fence. This is precisely the problem presented by the Commission's NPRM. It invades a province within the authority of the individual states. Further, the guidelines or model rules will impede the requirement of the 96 Act that there first be voluntary negotiations between incumbent LECs and potential competitors. ALLTEL sees nothing voluntary in negotiations when potential competitors already have a developed baseline in the form of model rules.

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\* subsequent citations omitted.  
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Second, the Commission cannot bootstrap its jurisdiction as it has sought to do here. Specifically, at pages 57 and 61 of the NPRM, the Commission cites Sections 1, 2, 4, 201, 222, 251, and 303(r) of the Communications Act as the legal basis for any action that may be taken pursuant to the NPRM. The Commission's earlier attempt to bootstrap its jurisdiction was soundly rejected by the Eighth Circuit. Section 251 does not provide any basis for the Commission's authority to issue the proposed guidelines. Neither do the other cited sections; i.e., 1, 2, 4, 201, 222, and 303(r). Furthermore, ALLTEL is surprised by the Commission's attempted reliance on Section 222 as authority for its action. Section 222 relates to the privacy of customer information and is self executing. It does not - although the Commission has done so - require the Commission to do anything with respect to customer proprietary network information. It certainly does not provide a basis for the Commission's jurisdiction with respect to its model rules on performance measurements and reporting requirements for "OSS, interconnection, and operator services, and directory assistance."

Putting jurisdictional concerns aside, ALLTEL believes that the NPRM conflicts with the requirements of the Administrative Procedure Act relating to rulemaking proceedings. It is couched as an NPRM, but the Commission does not seek to adopt specific rules. Rather, it claims that it is proposing guidelines or, alternatively, model rules, which may or may not be used by the states and which may or may not end up as national rules. It is unclear as to where the Commission ultimately intends to end up in

this process. Nevertheless, in ALLTEL's view what this translates to is de facto rules in an area in which the Commission has no jurisdiction.

Moreover, these de facto rules will impose reporting and measurement requirements on incumbent LECs without any consideration having been given to the significant costs of complying with the proposed measurements and reporting requirements or the recovery of those costs. This comes at a time when incumbent LECs already are burdened by the weight of technical requirements and costly expenditures to implement the Commission's CPNI, number portability, and dialing parity rules. It also comes at a time when the Commission's Common Carrier Bureau has proposed yet another reporting requirement with respect to competition in the local exchange market - this time in the form of a local competition survey. As with the NPRM, this effort purportedly is designed to make regulatory requirements more flexible as competition develops. See FCC Public Notice released May 8, 1998, DA - 98-839, CC Dkt. 91-141. Once again, ALLTEL must ask where is the need and where is the jurisdiction?

The Commission has also skirted the issue of exactly to whom its model rules will apply. In some places in the NPRM it appears that the model rules will apply to incumbent LECs subject to Section 251(c) obligations. This interpretation would at least be consistent with the Commission's decisions regarding OSS in CC Dkt. 96-98. However, this interpretation is undermined by the Commission's own Initial Regulatory Flexibility Certification. There the Commission states that it is "... seeking comments

on requiring all incumbent LECs to report on all measurements set forth in Appendix A.” NPRM at 59. ALLTEL’s strong objection to the Commission’s apparent attempt to encompass all incumbent LECs in its effort is fortified and confirmed by reference to the dissenting statement of Commissioner Furchtgott-Roth. At page 4 of his dissent he says that “these measurements and reporting requirements would apply to all local exchange carriers -- both large and small.”

This further flies in the face of the Eighth Circuit’s decision. The Eighth Circuit has held that the 96 Act specifically provides for exemptions and modifications with respect to Section 251(c) obligations of rural and two-percent companies and that grant of such falls within the province of a state and not the FCC. The Commission’s proposal to extend the model rules to rural and two percent companies also conflicts with its Second Order on Reconsideration in CC Docket 96-98. In that Order, the Commission acknowledged state commission jurisdiction with respect to granting Section 251(f) suspensions or modifications to two percent LECs. The Commission also held that “rural telephone companies are exempt from the requirements of Section 251(c) except when and to the extent otherwise determined by a state commission.” 11 FCC Rcd 19738, 19744 (1996).

ALLTEL is at loss to understand the Commission’s decision to adopt the NPRM in light of its position in the Second Order on Reconsideration regarding the status of local competition. Therein, the Commission said it was encouraged by reports of the progress of various incumbent LECs in meeting their OSS obligations and that it was

apparent from arbitration agreements and ex parte submissions that access to OSS functions can be provided without national standards. Id. at 19743. Moreover, only one month prior to the adoption of the NPRM, FCC Chairman Kennard reported to the Congress on the favorable status of competition in the local exchange market and the fact that over 2,400 interconnection agreements are in place. See March 19, 1998 Statement Before the Senate Subcommittee on Commerce, Justice, State and the Judiciary Committee on Appropriations.

The Commission's unclear direction is further underscored by the fact that it developed an extensive record on the LCI petition, but while discussing it in the NPRM, it did not formally deny or act on it. Also, at the same time, the Commission is preparing to adopt model rules in this proceeding, there are still outstanding petitions for reconsideration relating to OSS in CC Docket 96-98. ALLTEL strongly believes that the industry needs to know where the Commission intends to go. Before the Commission embarks on a rulemaking such as this one or any subsequent one, it is important to have first resolved any underlying issues pending in reconsideration requests. This situation has happened not only with respect to OSS, but with other interconnection issues, such as reciprocal compensation. The result is a myriad of related but unresolved proceedings and continued confusion and uncertainty in the industry. This should end.

## II. VIII Small and Mid-sized LECs.

As set forth above, it is ALLTEL's position that the Commission must pull back from this ill-considered NPRM because it does not have jurisdiction to adopt the proposed model rules. Even assuming the jurisdictional obstacle could be overcome, the Commission must realize that from the perspective of smaller LECs, the proposed reporting requirements and measurements to be performed are so expansive as to be considered almost punitive. The Commission must realize that most of what it is proposing for small and mid-sized incumbent LECs is not even currently done by them for their own operations and is not capable of being done for others without replacing entire systems. Once again, the ultimate question is "for what purpose?"

ALLTEL is not aware of problems within the industry as it relates to interconnection or to OSS implementation by small or mid-sized LECs. The Commission has reviewed OSS and related issues with respect to BOC checklist compliance when interLATA market entry has been sought, but this hardly justifies the sweeping reporting and performance measurement requirements it is trying to impose on the entire industry through its model rules.

### Conclusion

The Commission does not have jurisdiction to adopt its model rules. Its proposal seeks to invade a province of the individual states and to undermine the intent of the 96 Act that there be voluntary negotiations between the parties with respect to interconnection for competitive entry into the local exchange market. The Commission

should withdraw the NPRM. It is ill-advised and lacking in direction. It will only impose substantial costs and result in further uncertainty and confusion.

Respectfully submitted,

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Dated: June 1, 1998